

Before the

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of
Telecommunications and Energy on its
own Motion into the Appropriate
Regulatory Plan to succeed Price Cap
Regulation for Verizon New England, Inc.
d/b/a Verizon Massachusetts' intrastate
retail telecommunications services in the
Commonwealth of Massachusetts

D.T.E. 01-31

Surrebuttal Testimony of

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witness for the

Commonwealth of Massachusetts
Office of Attorney General

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SURREBUTTAL TESTIMONY

Introduction

Q. Please state your name, position and business address.

A. My name is Lee L. Selwyn. I am President of Economics and Technology, Inc., (“ETI”), Two Center Plaza, Suite 400, Boston, Massachusetts 02108.

Q. Are you the same Lee L. Selwyn who submitted direct testimony in DTE 01-31 on August 24, 2001 on behalf of the Commonwealth of Massachusetts Office of the Attorney General?

A. Yes, I am.

Purpose and summary of testimony

Q. What is the purpose of your testimony at this time?

A. I will respond to certain assertions and characterizations contained in the rebuttal testimony of Verizon-MA witness Mr. Robert Mudge regarding Verizon-MA’s involvement in the order for T-1 service that my firm, Economics and Technology, Inc., had placed with AT&T, and as such will

1 offer further evidence of the lack of competition in the Massachusetts business local exchange
2 service market.

3
4 Q. Please summarize your surrebuttal testimony.

5
6 A. In this proceeding, Verizon-MA is seeking *de facto* deregulation of its local business telephone
7 services in Massachusetts on the basis that these services are now “competitive” and as such are
8 readily available from competing local service providers. In my direct testimony, I expressed my
9 disagreement with Verizon-MA’s portrayal of the extent of competition in this segment, particularly
10 because so much of the CLEC activity is critically dependent upon Verizon-MA for underlying
11 facilities that are provided to CLECs either as bundled services for resale or as unbundled network
12 elements (UNEs) for use either on a stand-alone basis (UNE-P) or in conjunction with CLEC-
13 owned facilities to furnish services at retail to end users. By way of a specific case example about
14 which I have first-hand knowledge, I briefly discussed my firm’s experience in attempting to obtain
15 T-1 local exchange service from AT&T (which in turn provided service via Verizon-MA UNE
16 facilities) for the purpose of demonstrating the extreme dependence that CLECs in Massachusetts
17 continue to have with respect to Verizon in their efforts to compete with Verizon in the local
18 business service market. I observed that it was unlikely that many businesses would willingly
19 accept the difficulties, delays and risks that my firm had encountered in attempting to order service
20 from a CLEC, and that for this reason the presence of CLECs in the Massachusetts local service

1 market did not make that market sufficiently “competitive” to warrant deregulation of Verizon-
2 MA’s business services.

3
4 Although he was not personally involved in any of the interactions among ETI, AT&T and
5 Verizon-MA with respect to fulfilling the ETI service order, Mr. Mudge has nevertheless
6 undertaken to offer a second-hand presentation of Verizon’s side of the story. These details are
7 provided in Attachment 2 to his rebuttal testimony. Not surprisingly, his testimony presents a
8 somewhat limited version of Verizon’s position on the situation involving ETI’s service order at
9 Two Center Plaza. Unfortunately and in addition to certain misstatements of fact, the information
10 provided by Mr. Mudge attempts to unfairly and incorrectly shift responsibility for the various
11 difficulties that we encountered in attempting to obtain T-1 service away from Verizon-MA and
12 over to AT&T.¹

13
14 The purpose of this surrebuttal testimony is to present my personal and direct knowledge of the
15 interactions between ETI and these two carriers, so that the Department can have a complete *and*
16 *accurate* understanding of what transpired in the months-long process of obtaining local exchange
17 service from a CLEC in downtown Boston. My firm’s experience represents a valid case study of
18 the processes and pitfalls associated with an end-user customer’s efforts to do business with a

1. In response to AG-VZ 4-3(e), Verizon-MA admits to having possession of ETI’s detailed notes regarding the firm’s interactions between Verizon-MA and AT&T in its attempt at obtaining local service at Two Center Plaza. These notes were provided to Verizon New Jersey by ETI in response to data request VNJ-RPA-90 in New Jersey BPU Docket No. TO01020095.

1 carrier other than Verizon. The interchange also sheds light on the interactions between Verizon-
2 MA (as a wholesale service provider) and its CLEC customers.

3
4 Of particular importance is the discovery that, when new facilities are required at a customer's
5 premises for T-1 service, Verizon-MA apparently seeks to deploy fiber facilities irrespective of the
6 cost, capacity requirements, or the timeliness of service delivery for the end user. There are clear
7 economic trade-offs between copper and fiber, with the latter generally being used where the route
8 distance between the wire center and the customer premises is relatively long and/or where the
9 capacity requirement exceeds that which can reasonably be supported via copper. *Neither of*
10 *these conditions was present in our case.* Center Plaza, the location of ETI's premises, is
11 across Cambridge Street from the Verizon-MA Bowdoin central office, the serving wire center for
12 this building. Additionally, ETI's capacity requirement is at, and will not exceed, the T-1 level.
13 With respect to the facility to be used to provide our service, Verizon's decision to deploy fiber
14 rather than copper serves both to increase the cost basis for T-1 UNE facilities and to lengthen the
15 interval between the date when a CLEC order is placed with Verizon-MA and the date at which
16 the facilities are put into service. Additionally, to the extent that fiber optic subscriber line facilities
17 may not be available when a CLEC order for a T-1 UNE is placed, the practice of providing *only*
18 fiber-based T-1 facilities may also result in the nonavailability of facilities to the CLEC. These
19 various conditions, individually and collectively, undermine the ability of CLECs to serve their own
20 retail customers. My surrebuttal testimony will provide the Department with a greater appreciation
21 for Verizon-MA's ability to influence (1) the purchasing decisions of customers; and (2) the ability

1 of competitors to provide competitive local exchange telecommunications services where the use
2 of Verizon-MA underlying facilities is required.

3
4 **The experience that ETI encountered in attempting to order local telephone service from a**
5 **CLEC provides a compelling demonstration of the inability of CLECs to limit or constrain**
6 **Verizon-MA's market power, whether the "fault" in this instance lies with Verizon, the CLEC,**
7 **or both.**
8

9 Q. Please describe your own experience in attempting to obtain business telephone service from a
10 CLEC in Massachusetts.

11
12 A. Attachment 1 to my surrebuttal testimony contains both a summary overview of ETI's experience
13 in obtaining T-1 service from AT&T, as well as the detailed notes prepared under my direction
14 and supervision regarding ETI's interactions with Verizon-MA and AT&T. Attachment 2 to this
15 testimony contains Verizon-MA's non-proprietary response to AG-VZ 4-3, in which the
16 Company was requested to provide all notes and correspondence pertaining to the facility that was
17 to be provided to AT&T in connection with our service.

18
19 Q. Why is ETI's experience as you have related it in your direct testimony and in Attachment 1 to this
20 surrebuttal testimony relevant to the Department's consideration of Verizon-MA's request that its
21 business services be deregulated?

1 A. The question before the Department is whether there is at this time a *sufficient* level of competition
2 in the Massachusetts business telephone service market to limit or constrain Verizon-MA's market
3 power. For that to exist, customers must view CLEC-provided services as *close substitutes* to
4 Verizon offerings. If customers perceive that dealing with a CLEC will create difficulties,
5 disruptions, costs, inconveniences and risks that could be avoided by dealing directly with Verizon,
6 the presence of CLECs will not materially limit Verizon's market power, and CLECs will remain,
7 as they are today, at the competitive fringe of what is essentially a monopoly market.

8
9 The point of my discussing our own experience as a business end user customer seeking to obtain
10 service from a CLEC is to emphasize the fact that customers are confronted with substantial risks if
11 they undertake to do business with a carrier other than Verizon, and as long as customers believe
12 that to be the case, they will be reluctant to do business with a CLEC. In our own case, our
13 decision to take local service from AT&T might well have resulted in our having *no telephone*
14 *service at all* for nearly two months following our May 18 occupancy of our new office space. It
15 is only because of ETI's unique familiarity with the local telephone service market and the potential
16 difficulties that might arise that we were able to anticipate the possibility of problems and initiated
17 backup measures; most other businesses would most likely have given up on the CLEC long
18 before Verizon got around to completing the installation of the T-1 facility, and would have
19 returned to Verizon *on a permanent basis* for their local telephone service. Whether Verizon's
20 actions are the result of a deliberate strategy to sabotage CLEC relationships with their customers
21 or are simply the result of Verizon's persistence in utilizing antiquated service provisioning

1 processes, the effect is exactly the same: Verizon is able to discourage customers from doing
2 business with CLECs.

3
4 Q. Mr. Mudge attributes the delays in processing AT&T's order to various actions on the part of
5 AT&T rather than Verizon, including AT&T's submission of orders that were "not complete" as
6 well as an apparently duplicate order. Do these actions on AT&T's part, assuming that they
7 occurred as Mr. Mudge has described, absolve Verizon of blame with respect to fulfillment of this
8 service order?

9
10 A. No. First, nothing that Mr. Mudge has said addresses the fundamental point that, by his own
11 admission, there was a "lack of facilities" at a Government Center office building located directly
12 across the street from the Verizon wire center, and that some two months were required to bring a
13 cable all of about 200 feet across the street. It doesn't absolve Verizon for not even making a site
14 visit until May 22, despite having received a fully completed order nearly a month earlier. Nor
15 does Mr. Mudge explain why, once it was determined that the facility would be provisioned using
16 copper, the same two month delay was required. As to the alleged defects in the AT&T service
17 orders, I would observe that Mr. Mudge does not address the nature of these alleged deficiencies,
18 the fact that Verizon's own systems for processing them are so unforgiving, nor does he justify the
19 seemingly enormous time it took to correct them.² One obvious question is, had the same errors

2. In my direct testimony (at 72) I observed that "it is probably to the Company's competitive advantage to maintain the provisioning of its T-1 services in a degraded state precisely because by so
(continued...)

1 or omissions been made by a Verizon service order writer with respect to a Verizon retail order,
2 would they have been returned to the originator in the same manner, or would the plant person
3 have simply picked up the phone and called over to the order writer to get the matter resolved? I
4 seriously doubt that Verizon requires the type of convoluted process that CLECs seem to be
5 subjected to in order to “correct” deficiencies in orders. One is also compelled to ask why the
6 ordering process is itself so cumbersome and unforgiving that mechanical errors are so easily made
7 by the CLEC and cause such protracted delays in completing the order.

8
9 Q. Dr. Selwyn, suppose that for the sake of argument it turned out that all of the difficulties that ETI
10 had experienced in obtaining telephone service were entirely the fault of AT&T. Would that alter
11 your belief that the local business telephone service market in Massachusetts is not competitive at
12 this time?

13
14 A. No, and in fact it would serve to underscore just how limited CLEC supply elasticities are in
15 responding to demand in this market. AT&T is one of the largest, if not the largest, CLECs in the
16 Massachusetts market. AT&T has been in the telephone business for a long time. AT&T’s local

2. (...continued)

doing VMA is able to keep CLECs’ supply elasticities low.” AG-VZ 4-3(c) asked Verizon-MA to provide “all notes and documentation in Verizon-MA’s possession pertaining to the ETI service that is discussed in Mr. Mudge’s rebuttal testimony, Attachment 2.” Verizon’s proprietary response included some forty separate documents. It is instructive to peruse these just to see how the fulfillment process operates, and to confirm that no mechanized operations support systems appear to have been utilized by Verizon in completing this order.

1 business service operation in the Boston area was originally organized by Teleport
2 Communications Group (TCG), which was subsequently acquired by AT&T in 1998. TCG was
3 founded in 1983 and was one of the earliest CLECs in business anywhere. Even if all of the
4 difficulties that we encountered are attributed to malfeasance on the part of AT&T and if Verizon is
5 blameless, we are still confronted with the fact that doing business with a CLEC – even one of the
6 largest and most experienced of them – is difficult and risky for an end user customer. If AT&T is
7 to blame in this situation, it then suggests that contrary to Verizon’s contentions, *CLECs must lack*
8 *the capacity and business acumen to successfully compete with Verizon in the local business*
9 *service market.* Either way, the market cannot be considered as sufficiently “competitive” to
10 warrant deregulation of the dominant incumbent, Verizon-MA, at this time.

11
12 **Verizon-MA has adopted engineering and deployment practices with respect to CLEC orders**
13 **for T-1 facilities whose effect is to increase their costs and introduce protracted delays in the**
14 **provisioning and installation process.**
15

16 Q. Has Mr. Mudge’s rebuttal testimony shed any additional light on the situation?
17

18 A. Yes. As indicated in his rebuttal testimony, Mr. Mudge has placed the blame for the additional
19 delay upon AT&T for issuing a duplicate order for T-1 service on May 22, and a subsequent
20 cancellation of the allegedly incorrect order,³ but these seemingly minor occurrences do not explain

3. Mudge Rebuttal (Verizon-MA), Attachment 2, at 2-3. We are unable to determine why, or even if, such a “duplicate” order was placed by AT&T. One possibility may be that the duplicate, if
(continued...)

1 or excuse the fact that the Company was originally going to use fiber despite its unavailability and
2 that the copper T-1 facility, which Verizon's outside plant engineer had indicated was physically
3 available and could be provisioned within six business days of his May 22 site visit, was not
4 provisioned until July 13. This despite the fact that the service request had by then been escalated
5 in priority by both AT&T and Verizon-MA, as indicated in Attachment 1.

6
7 Q. In Attachment 1, you describe the interchange you had with Mr. Evan McSorley, a Verizon-MA
8 engineer assigned to install Verizon's facilities at ETI's premises. Is there any significance to your
9 discussion with Mr. McSorley regarding Verizon-MA's attempt to install fiber facilities at ETI's
10 premises?

11
12 A. Yes. The interchange between myself and Mr. McSorley on May 22, which Mr. Mudge
13 addresses in Attachment 2 to his rebuttal testimony, is important for two reasons. First, it
14 contradicts Mr. Mudge's contention that no facilities were available to serve ETI's office space at
15 Two Center Plaza,⁴ because Mr. McSorley indicated that copper facilities were available and that

3. (...continued)

that's what it was, resulted from the decision to provide the circuit via copper rather than fiber. Significantly, while Mr. Mudge contends that "[b]elieving there to be some confusion [with respect to the "second T1 request"], [the Verizon-MA engineer] contacted ETI for clarification." *Id.* According to Mr. Mudge, this "second order" was received by Verizon-MA on May 22; our notes indicate that Mr. McSorley, the Verizon-MA engineer, did not "contact [us] for clarification" until June 7. *See* Attachment 1 at 8.

4. Mudge Rebuttal (VMA), Attachment 2, at 1.

1 the service could be provided using those facilities. Second, and most importantly, Mr.
2 McSorley's original plan to provide capacity for eight T-1s via fiber facilities is corroborated by
3 Mr. Mudge's statement that it is Verizon-MA's "regular practice [] to provision T1 services via
4 fiber and electronics whenever possible..."⁵ It is far from obvious as to *why* it is or should be
5 Verizon's "regular practice" to so grossly overbuild subscriber facilities when that action (a) costs
6 more than it would using copper, (b) takes longer to provide than it would using copper, (c) may
7 result in no facilities being available to satisfy the CLEC order, and (d) bears no realistic
8 relationship with the end user's actual needs. Attorney General information request AG-VZ 4-3
9 specifically requested that Verizon provide "all written guidelines, policies or practices supporting
10 the contention allegedly made by 'Verizon-MA's engineer ... that Verizon-MA's regular practice
11 is to provision T1 service via fiber and electronics whenever possible.'" Verizon-MA declined to
12 provide any support for that contention, and simply objected to the request "on the grounds that
13 the request is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery
14 of admissible evidence, and seeks the disclosure of confidential and commercially sensitive
15 material."⁶

16
17 Q. Did Mr. Mudge provide any further basis for Verizon-MA's choice of installing fiber facilities in
18 your office?
19

5. *Id.*, at 2.

6. *See* Attachment 2, AG-VZ 4-3(g).

1 A. No. Additionally, in AG-VZ 4-3(h), the Attorney General sought “copies of any and all cost
2 studies, engineering economic analyses, and underlying data comparing the cost of a fiber optic vs.
3 a copper provisioning arrangement where the customer requirement is for a single T-1 line only
4 and where the distance between the customer and the serving wire center is in the range of 500
5 feet or less.” Verizon-MA offered the same objection as it did with respect to documentation
6 regarding Verizon’s “engineering practices.”⁷

7
8 In any event, and notwithstanding the questionable legitimacy of the “practice” of using fiber rather
9 than copper to which Mr. Mudge refers, the fact remains that Verizon-MA ignored completely the
10 requests from the CLEC (AT&T) and the end user (ETI) regarding (1) the level of demand for
11 service, and (2) the timing of service completion. As noted, Mr. Mudge admits that there was a
12 “lack of *fiber* facilities at the end user’s (ETI’s) location,”⁸ which is consistent with the information
13 that Mr. McSorley provided to me on May 22 and upon which I indicated that we would be
14 perfectly happy with copper inasmuch as it was available both in the building and on our floor and
15 could be furnished in six business days. Given that the T-1 facility was ultimately provided via
16 copper and not fiber, Mr. Mudge fails entirely to explain why the two-month delay, from May 22
17 to July 13, was justified.

7. See Attachment 2, AG-VZ 4-3(h).

8. Mudge (Verizon-MA), Attachment 2, page 1, emphasis supplied.

1 Q. What is Verizon's policy generally when no facilities are available to satisfy a CLEC order for a T-
2 1 UNE?

3
4 A. Verizon issued a notice to CLECs on July 24, 2001 addressing this specific matter, a copy of
5 which is included in Attachment 3 to this surrebuttal testimony. According to this notice,

6
7 ... Verizon will provide unbundled DS1 and DS3 facilities (loops or IOFs) to requesting
8 CLECs when existing facilities are currently available. Conversely, Verizon is not obligated to
9 construct new Unbundled Network Elements where such network facilities have not already
10 been deployed for Verizon's use in providing service to its wholesale and retail customers. ...

11
12 Q. What is Verizon's policy with respect to constructing facilities where its own retail customer is
13 involved?

14
15 A. Verizon addressed this question specifically in a response to Rhode Island PUC Staff data request
16 PUC-CON-1-12 in RI PUC Docket 3363 (a copy of which appears in Attachment 3). There,
17 the Company stated that

18
19 As a general matter, retail orders are not rejected due to a lack of facilities because Verizon
20 generally will undertake to construct the facilities required to provide service at tariffed rates
21 (including any applicable special construction rates) if the required work is consistent with
22 Verizon's current design practices and construction. Like its retail and carrier access
23 customers, Verizon's CLEC customers may request Verizon to provide DS1 and DS3
24 services pursuant to the applicable state or federal tariffs.
25

1 Significantly, our experience is consistent with Verizon's policy as stated in its RI PUC response.

2 After having been advised on May 22 – already more than a month after the date at which AT&T

3 had placed the order for our facility with Verizon – that it might take as long as two additional

4 months before we would receive our service, on or about May 22, I directed ETI's office manager

5 to contact the Verizon small business sales unit in Boston and inquire as to the installation interval

6 for Verizon-MA's own retail T-1 exchange access trunk service, which is known as Flexpath.

7 The Verizon-MA contact, Mr. Sean Flaherty, quoted an installation interval of one month if the

8 service were ordered by ETI directly from Verizon.

9
10 Q. What is Verizon's legal basis for its contention that it "is not obligated to construct new Unbundled
11 Network Elements" to fill a CLEC UNE order?

12
13 A. Verizon's legal basis for this position is addressed in its response to Rhode Island PUC Staff data
14 request, item PUC-CON 1-11, in RI PUC Docket 3363, a copy of which is also included in
15 Attachment 3 hereto. Without debating the merits of Verizon's legal theory here (and even
16 assuming for the sake of argument that Verizon's legal stance is correct), there will be situations –
17 apparently such as the one we encountered – where Verizon will provide service at retail but will
18 not provide the underlying facilities for the same customer at the same location if the customer
19 chooses to do business with a CLEC.

1 Q. But in ETI's case Verizon apparently *had* the facilities but still didn't provide them, is that what
2 you're suggesting?

3
4 A. So it would seem, at least with respect to copper. Verizon claimed not to have fiber but did not on
5 its own undertake to provide a substitute facility using copper until expressly asked to do so. My
6 notes demonstrate that on June 12, 2001, Verizon's engineer indicated that the dates for service
7 installation could be "pulled in" from the original service date of July 26, 2001 to June 18, 2001.⁹
8 However, it still took Verizon another month (until July 13) to provide the facility.¹⁰

9
10 Q. Does this conclude your surrebuttal testimony at this time?

11
12 A. Yes, it does.

9. See Attachment 1, at 7-8.

10. The correct completed installation date was July 13, 2001, not July 25, 2001, as Mr. Mudge asserted on page 3 of Attachment 2 to his rebuttal testimony.